U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HELEN E. PAGLINAWAN and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION, San Diego, CA

Docket No. 99-2342; Submitted on the Record;
Issued January 17, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the record on appeal and finds that the case is not in posture for decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions.[7] By decision dated April 13, 1999, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant attributed her condition to the employing establishment changing the starting date of her new position following her transfer from Honolulu, Hawaii to San Diego, California. She further alleged that the employing establishment failed to timely issue her an officer performance rating, wrongly denied leave, lost her personnel file and prevented her from beginning her new position until she had a security clearance. The Board notes that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[8] Although the handling of starting dates, performance ratings, leave requests and the issuance of security clearances are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.[9] However, the Board has also found that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] Appellant originally filed her claim as a recurrence of disability causally related to a July 4, 1995 employment injury. The Office adjudicated her claim as an occupational disease claim after noting that she had alleged new employment factors.

[8] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[9] *Id.*

employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[10] In a letter dated March 23, 1999, an official with the employing establishment related that all employees have to obtain a security clearance before starting a new position within the employing establishment. She further noted that appellant had not established that her start date was incorrect and that the employing establishment had made "[c]oncerted and conscientious efforts" to inform appellant of a change in start dates. The official also indicated that appellant failed to submit appropriate medical documentation to support her leave requests and that she should request an officer performance rating from officials at her prior workstation in Honolulu, Hawaii. The official further denied possession of appellant's personnel file and noted that the files were maintained in a separate location. Appellant has submitted no evidence in support of her contention that the employing establishment erred in the handling of an administrative function. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Regarding appellant's contention that the employing establishment failed to provide the information needed for the Office to process to her request for leave buy-back in conjunction with her prior emotional condition claim, the Board notes that generally the development of any condition related to such a matter would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[11] However, where there is evidence of error in the employing establishment's administration of this type of matter, this may arise to a compensable factor of employment.

Appellant further alleged that, after she accepted a transfer to a new position in San Diego, California, the employing establishment erroneously left her in a nonpay status for nine months. The Office requested that the employing establishment provide comments regarding appellant's allegation that she inappropriately remained without pay for nine months. In response, an official with the employing establishment indicated that, "during a nine-month period following her acceptance of the position, [appellant] remained on the roles of the Honolulu district. As of this date, they have failed to respond to requests for this information." It is, therefore, unclear from the record whether the employing establishment followed its accepted procedures in placing appellant in a nonpay status during the time period in question.

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[12]

On remand, the Office should further develop the issue of whether the employing establishment erred in handling the leave buy-back matter and whether the Office properly placed appellant in a nonpay status for nine months following her acceptance of a transfer to a

[10] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[11] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[12] *John L. Mann*, 42 ECAB 170 (1990).

new position. If the evidence substantiates either of appellant's contentions, the Office must base its decision on an analysis of the medical evidence.[13]

The decision of the Office of Workers' Compensation Programs dated April 13, 1999 is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
January 17, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[13] *Lorraine E. Scroeder*, 44 ECAB 323 (1992).